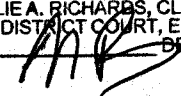


FILED

JUN 16 2014

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

JULIE A. RICHARDS, CLERK  
US DISTRICT COURT, EDNC  
BY  DEP CLK

Gustavo Romanello )

)

Vs. )

Case No. 5:14 cv 177-FL

)

Capital One Bank (USA), N.A. )

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS**

To this Court's Honorable United States District Court Judge:

COMES NOW Plaintiff, Gustavo Romanello, who hereby submit his response to Defendant's Motion to Dismiss and state as follows:

**INTRODUCTION**

1. On March 21, 2014 Plaintiff filed a lawsuit for violations of the Fair Credit Reporting Act (FCRA) 15 U.S.C. sec. 1681 et seq. against Defendant Capital One Bank (USA) N.A. (CapOne).
2. After requesting a Motion for extension of time to answer, Defendant filed on May 26, 2014 a Motion to Dismiss for failure to state a claim upon which relief can be granted.
3. On June 16, 2014 Plaintiff timely files this response to Defendant's Motion to Dismiss.

**ARGUMENTS & AUTHORITIES**

A plaintiff satisfies their burden if they allege facts sufficient to allow a court to infer "more than the mere possibility of misconduct". *Ashcroft v. Iqbal*, 129 W. Ct. 1937, 1950 (2009).

Federal Rules of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief", in order to "give the defendant notice of what the ...claim is and the grounds upon which it rests", *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957).

"A complaint attacked by rule 12(b)(6) motion to dismiss does not need detailed factual allegations", *Id.* At 555.

When considering defendants motions, the court must construe the factual allegations in the complaint in the light most favorable to the Plaintiff. *In Re Stac Electr. Sec. Litig.*, 89 F.3d 1399, 1403 (9<sup>th</sup> cir. 1996); *Jones v. General Electric Co.*, 87 F.3d 209, 211 (7<sup>th</sup> cir. 1996)

Defendant CapOne's exhibits are a common boilerplate list of cases presented by violators of the FCRA. Those cases did not even get to Discovery, because Plaintiff's had "insufficient service of process" in *King v. Equable*, or for "disobeying court directive to appear in hearing" in *Nowlin v. Capital One*, *James v. Paragon* or *Golden v. NCO*; or for not "filing a responsive brief as advised by the court", in *Nowlin v. Avis Budget*.

The FCRA is a strict liability statute, and Plaintiff is not asking for actual damages but he is entitled to statutory damages. When considering a motion to dismiss the Court must keep in mind that "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers", *Erickson v. Pardus*, 551 U.S. at 83 (2007), see *Exh. A*

In the present case Plaintiff claims CapOne didn't have a permissible purpose when acquired his credit reports because his account was discharged in bankruptcy in August 2009, see Exh. B

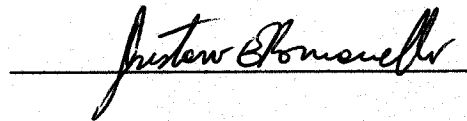
After the bankruptcy, Plaintiff didn't get any offer of credit, and CapOne didn't have any reason or need to review any account, and had no reason to collect any account on a bankrupt consumer with discharged debts.

Pursuant to F.R.C.P. 11(b)(3) Plaintiff has stated facts that would indicate that there is enough reason to pursue the production of further evidence through Discovery of Defendant's certification with the Credit Reporting Agencies, that would justify Plaintiff claim of violations of the FCRA.

WHEREFORE, Plaintiff respectfully request that this honorable Court deny defendant's Motion to dismiss and allow him to go forward on the merits.

Respectfully submitted

Gustavo Romanello  
5317 Cottage Bluff Ln.  
Knightdale, NC 27545  
[tangogauch@gmail.com](mailto:tangogauch@gmail.com)  
919-649-4494

A handwritten signature in black ink, appearing to read "Gustavo Romanello", is written over a horizontal line.

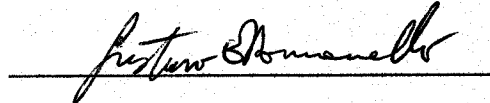
#### CERTIFICATE OF SERVICE

The undersigned hereby certify that on June 16, 2014 a copy of the foregoing Plaintiff's response to Defendant's Motion to dismiss was served upon parties to this action as follows:

R. Locke Beatty  
McGuire Woods LLP  
201 N. Tryon St., ste. 3000  
Charlotte, NC 28202  
Counsel for Capital One Bank (USA), N.A.

This June 16, 2014

Gustavo Romanello  
5317 Cottage Bluff Ln.  
Knightdale, NC 27545  
[tangogauch@gmail.com](mailto:tangogauch@gmail.com)  
919-649-4494

A handwritten signature in cursive script, reading "Gustavo Romanello", is positioned above a horizontal line.